

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY
PROBATE DIVISION**

FILED

DIVISION 19

09-Jul-2018 12:06

CIRCUIT COURT OF JACKSON COUNTY, MO

BY *Rita J. Reynolds*

SAMUEL S. KNOPIK,
Petitioner,

v.

SHELBY INVESTMENTS, LLC,
Respondent.

Case No. 17P8-PR01016

**JUDGMENT GRANTING DEFENDANT SHELBY INVESTMENTS, LLC'S
MOTION FOR SUMMARY JUDGMENT ON ITS COUNTERCLAIM
FOR DECLARATORY JUDGMENT**

NOW on this 9th day of July, 2018, the Court takes up for consideration the Motion for Summary Judgment filed by Samuel S. Knopik on January 31, 2018, and the Motion for Summary Judgment filed by Shelby Investments, L.L.C. on February 2, 2018. A hearing was held on May 4, 2018, and the Petitioner, Samuel S. Knopik, appeared by counsel, Michael W. Blanton, Esquire. Respondent Shelby Investments, L.L.C. appeared by counsel, Kevin D. Stanley, Esquire. After hearing oral arguments, the Court took this matter under advisement. The Court now makes the following findings:

FINDINGS OF FACTS

1. That all of the pertinent facts in this case are undisputed.
2. That Gift L.L.C. was the grantor of the Knopik Irrevocable Trust, dated December 21, 2016 (hereinafter "Trust").
3. That Samuel S. Knopik (hereinafter "Petitioner"), is the sole beneficiary of the Trust.
4. That Shelby Investments, L.L.C. (hereinafter "Respondent") is the sole trustee of the Trust.
5. That Section 2 of the Trust states as follows:

During Sam Knopik's lifetime, each month, on the first business day of the month, beginning in December 2016 and ending in December 2020, the Trustee shall distribute to Sam Knopik One Hundred Dollars (\$100.00)

from the trust estate. The Trustee shall add any undistributed net income to principal. On January 4, 2021, the Trustee shall distribute the remaining trust estate to the Settlor, terminating the trust.

6. That in February 2017, Petitioner received a single payment of \$100.00 pursuant to the terms of the Trust. Since February 2017, no monthly payments have been paid by the Trustee to the Petitioner pursuant to the terms of the Trust.
7. That Respondent has affirmatively stated that it does not intend to make any future payments to Petitioner pursuant to Section 2 of the Trust.
8. That on August 18, 2017, Petitioner filed his two-count Petition for Breach of Trust and Removal (hereinafter "Petition").
9. That Count 1 of Petition alleged that Respondent breached its fiduciary duties as trustee. Count 2 of Petition sought the removal of Respondent as trustee of Trust. Petition also requested the appointment of James G. Rittenbaum as a replacement trustee.
10. That the Trust contains a "No-Contest" clause which states "[i]n case any beneficiary shall (i) contest the validity of this trust, or any provisions thereof, in whole or in part; (ii) make a claim against a trustee for maladministration or breach of trust; or (iii) attempt to remove a trustee for any reason, with or without cause; then such contest or claim and such attempt shall cancel and terminate all provisions for or in favor of the beneficiary making or inciting such contest or claim, without regard to whether such contest or claim shall succeed or not; and all and any provisions or provision herein in favor of the beneficiary so making such contest or claim, or attempting or inciting the same, to be revoked and of no force and effect; and the entire trust estate shall revert to the Settlor and be distributed to the Settlor."
11. That on November 14, 2017, Respondent filed its answer, admitting many of the allegations set forth by Petitioner and counterclaiming for declaratory judgment.

12. That the basis for the counterclaim is that Petitioner violated the “No-Contest” clause upon the filing of Petition, and as a result, all provisions of the Trust in favor of Petitioner should be cancelled and terminated.
13. That Petitioner filed his motion for summary judgment on January 31, 2018, and Respondent filed its motion for summary judgment on February 2, 2018.
14. That both motions for summary judgment focus on the sole issue before the Court, which is whether or not the “No-Contest” clause in the Trust was triggered by the filing of Petition.

CONCLUSIONS OF LAW

15. That at any time, a party against whom a claim is asserted may move with or without supporting affidavits for a summary judgment as to all or any part of the pending issues. Mo. Sup. Ct. Rule 74.04(b). If the motion, the response, the reply, and the sur-reply show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law, the court shall enter summary judgment forthwith. Rule 74.04(c). A “genuine issue” is a dispute that is real, and not one that is merely argumentative, imaginary or frivolous. ITT Commercial Finance Corp. v. Mid-America Marine Supply Corp., 854 S.W.2d 371, 382 (Mo. 1993). Where the “genuine issues” raised by the non-movant are merely argumentative, imaginary or frivolous, summary judgment is proper. Id.
16. That in reviewing a motion for summary judgment, the Court must review the record in light most favorable to Petitioner. Zafft v. Eli Lilly, 676 S.W.2d 241, 244 (Mo. Banc 1984); Cooper v. Finke, 376 S.W.2d 225, 228 (Mo. 1964). Additionally, the Court must accord the Petitioner the benefit of all reasonable inferences from the record. Martin v. City of Washington, 848 S.W.2d 487, 489 (Mo. Banc 1993); Madden v. C & K Barbecue Carryout, Inc., 785 S.W.2d 59, 61 (Mo. Banc 1988). Summary judgment requires the Court to test simply for the existence, not the extent, of genuine disputes. Accordingly, a trial Court

cannot grant summary judgment when, to do so, it must overlook material in the record that raises a genuine dispute as to the facts underlying a parties right to summary judgment. ITT, 854 S.W.2d at 378.

17. That the interpretation or construction of a trust is an issue of law that is determined by the Court. Kempton v. Dugan, 224 S.W.3d 83, 86 (Mo. App. 2007). Accordingly, the construction or interpretation of a trust may be determined by the Court on summary judgment. Goulding v. Bank of America, N.A., 340 S.W.3d 114, 119 (Mo. App. 2010).
18. That Under the Missouri Uniform Trust Code, a trustee may bring an action for declaratory judgment regarding the rights of a party under a trust agreement. A proceeding involving a trust may include, among many other things, a declaration of rights of the parties. RSMo. §456.2-202.3.
19. That an action for Declaratory Judgment under Missouri law is also set forth in statute. RSMo. §527.010 – §527.130. The Court has the “power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.” Any person “whose rights, status or other legal relations are affected by a statute . . . may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.” RSMo. §527.020. The specifically enumerated powers provided under the declaratory judgment statutes do not limit the exercise of general power granted under §527.010 when a “judgment or decree will terminate the controversy or remove an uncertainty.” RSMo. §527.050.
20. That the statutes make clear that the declaratory judgment provisions are to be broadly construed. RSMo. §527.110. “This law is declared to be remedial; its purpose is to settle

and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations; and is to be liberally construed and administered.” RSMo. §527.110.

21. That the paramount rule in construing a trust is that the intent of the grantor is supreme. The grantor’s intent must be ascertained primarily from the trust instrument as a whole, and no clause in the trust is given undue preference. The unambiguous terms of a trust will be given effect, and the Court will not attempt to rewrite an unambiguous trust under the guise of construction. In re Gene Wild Ins. Trust, 340 S.W.3d 139, 143 (Mo. App. 2011); see also Kimberlin v. Dull, 218 S.W.3d 613, 616 (Mo. App. 2007); Blue Ridge Bank and Trust Co. v. McFall, 207 S.W.3d 149, 156 (Mo. App. 2006).
22. That no-contest clauses are enforceable without exception. Commerce Trust Co. v. Weed, 318 S.W.2d 289, 301(Mo. 1958).
23. That “forfeitures are not favored by the law.” However, “a no-contest or forfeiture provision is to be enforced where it is clear that the trustor (or testator) intended that the conduct in question should forfeit a beneficiary’s interest under the indenture (or will).” Cox v. Fisher, 322 S.W.2d 910, 914 (Mo. 1959). That Missouri does not recognize an exception to the enforceability of a no-contest clause in cases where the clause has been triggered by actions of a beneficiary. Id.
24. That a valid forfeiture provision is to be enforced upon violation without regard to any exception based upon the good faith and probable cause of the contestant. Commerce Trust Co. v. Weed, supra. at 913-14.

ANALYSIS

25. That the filing of Petition by Petitioner violates the “No-Contest” clause of the Trust.

26. That the “No-Contest” clause of the Trust contains provisions that prohibit Petitioner from making a claim against Respondent for maladministration or breach of trust, as well as attempting to remove a Respondent as trustee for any reason, with or without cause.
27. That the plain language of the “No-Contest” clause clearly sets forth the intent of the settlor of the Trust; the intent being, if any beneficiary seeks to remove the Respondent as trustee or if any beneficiary sues the Respondent as trustee for maladministration, then all provisions in favor of that beneficiary are revoked.
28. That Petitioner argues that he is not seeking to contest Trust, but only seeking to enforce the terms of Trust and the duties of Respondent as trustee under the Trust. While that may be true, the caption of Petition reads “Petition for Breach of Trust and Removal.”
29. That in addition to the language in the caption of Petition, the prayer of Petition requests the Court to remove Respondent as trustee for breaching its fiduciary duties to Petitioner.
30. That the “No-Contest” clause succinctly states that any attempt to remove a trustee for any reason, with or without cause, is a contest and that such contest shall cancel and terminate all provisions for or in favor of the beneficiary.
31. That by reviewing the language of the “No-Contest” clause and applying the holdings of Cox, the action taken by Petitioner is the specific type of conduct the grantor defined as a contest.
32. That Petitioner argues that the “No-Contest” clause should not be construed as applying to actions pertaining to administration of Trust. Petitioner also argues that the “No-Contest” clause is an exculpatory clause, and therefore, subject to the statutory limitations that apply to exculpatory clauses, and that there should be a distinction between challenging a trust and enforcing a trust.

33. That while these points well taken, they are not supported by Missouri law. The Missouri Supreme Court has already considered whether exceptions to “no contest” clauses in wills and other probate documents should be recognized and allowed.
34. That the Court in Commerce Trust Co. considered all of the arguments as to why “no contest” clauses should not be enforced when there is “good faith and probable cause” to challenge a will or, as in this case, a trust. Commerce Trust Co. v. Weed, at 301. Even after considering all arguments, that Court still found that no contest or forfeiture clauses are enforceable.
35. That under the circumstances shown herein, Petitioner’s action of filing Petition, as plead, is in direct violation of the “No-Contest” clause.
36. That Respondent is entitled to judgment as a matter of law on its counterclaim for declaratory judgment in this case.

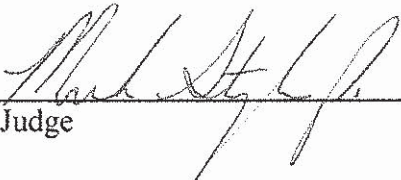
It is therefore,

ORDERED, ADJUDGED AND DECREED that Motion for Summary Judgment filed February 2, 2018, by the Respondent, is hereby GRANTED and judgment is entered against Samuel S. Knopic and in favor of Shelby Investments L.L.C., Trustee of the Knopik Irrevocable Trust.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all remaining trust assets be returned to the settlor, Gift L.L.C. Any and all other relief not specifically granted is hereby denied.

IT IS SO ORDERED.

July 9, 2018
Date


Judge